

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 13-11460-RWZ

BRIGHAM AND WOMEN'S HOSPITAL, INC. and
INVESTORS BIO-TECH, L.P.

v.

PERRIGO COMPANY and L. PERRIGO COMPANY

QUESTIONS TO THE JURY ON SPECIAL VERDICT

December 14, 2016

A. INFRINGEMENT - BWH and IBT have the burden of proof by a preponderance of the evidence

Direct Infringement

Question No. 1: Does defendant Perrigo, by manufacturing and selling Famotidine Complete, directly infringe claims 1, 4, 5, 6, 7, and/or 12 of the '137 patent?

a) Claim 1:	YES <u>✓</u>	NO <u> </u>
b) Claim 4:	YES <u>✓</u>	NO <u> </u>
c) Claim 5:	YES <u>✓</u>	NO <u> </u>
d) Claim 6:	YES <u>✓</u>	NO <u> </u>
e) Claim 7:	YES <u>✓</u>	NO <u> </u>
f) Claim 12:	YES <u>✓</u>	NO <u> </u>

Please answer next Questions 2 and 3.

Inducement to Infringe

Question No. 2: Did defendant Perrigo induce infringement by manufacturing and selling Famotidine Complete with the knowledge and intent that a third party who uses its product would thereby infringe claims 1, 4, 5, 6, 7, and/or 12?

- | | | | | |
|--------------|-----|----------|----|---------------|
| a) Claim 1: | YES | <u>✓</u> | NO | <u> </u> |
| b) Claim 4: | YES | <u>✓</u> | NO | <u> </u> |
| c) Claim 5: | YES | <u>✓</u> | NO | <u> </u> |
| d) Claim 6: | YES | <u>✓</u> | NO | <u> </u> |
| e) Claim 7: | YES | <u>✓</u> | NO | <u> </u> |
| f) Claim 12: | YES | <u>✓</u> | NO | <u> </u> |

Contributory Infringement

Question No. 3: Did defendant Perrigo contributorily infringe by manufacturing and selling Famotidine Complete with the knowledge that its product was made for use by a third party which use would infringe claims 1, 4, 5, 6, 7, and/or 12?

- | | | | | |
|--------------|-----|----------|----|---------------|
| a) Claim 1: | YES | <u>✓</u> | NO | <u> </u> |
| b) Claim 4: | YES | <u>✓</u> | NO | <u> </u> |
| c) Claim 5: | YES | <u>✓</u> | NO | <u> </u> |
| d) Claim 6: | YES | <u>✓</u> | NO | <u> </u> |
| e) Claim 7: | YES | <u>✓</u> | NO | <u> </u> |
| f) Claim 12: | YES | <u>✓</u> | NO | <u> </u> |

If you answered YES as to any parts of Questions 1, 2, or 3, please answer next Question 4.

If you found no claims to be infringed by answering NO to all parts of Questions 1, 2, and 3, please go directly to Question 5.

Willful Infringement

Question No. 4: Did defendant Perrigo willfully infringe claims 1, 4, 5, 6, 7, and/or 12 of the '137 patent?

- a) Claim 1: YES ✓ NO _____
- b) Claim 4: YES ✓ NO _____
- c) Claim 5: YES ✓ NO _____
- d) Claim 6: YES ✓ NO _____
- e) Claim 7: YES ✓ NO _____
- f) Claim 12: YES ✓ NO _____

B. VALIDITY

Priority Date - BWH and IBT have the burden of proof by a preponderance of the evidence.

Question No. 5: The effective priority date of the '137 patent is

- a) March 1990 ☒ _____
b) May 6, 1992 _____

Perrigo has the burden of proof by clear and convincing evidence on Questions Nos. 6 and 7.

Anticipation

Question No. 6: Are one or more of the asserted claims of the '137 patent invalid because the claimed method of use was anticipated by a single prior art publication or reference?

- | | | |
|--------------|-----------|--|
| a) Claim 1: | YES _____ | NO <input checked="" type="checkbox"/> _____ |
| b) Claim 4: | YES _____ | NO <input checked="" type="checkbox"/> _____ |
| c) Claim 5: | YES _____ | NO <input checked="" type="checkbox"/> _____ |
| d) Claim 6: | YES _____ | NO <input checked="" type="checkbox"/> _____ |
| e) Claim 7: | YES _____ | NO <input checked="" type="checkbox"/> _____ |
| f) Claim 12: | YES _____ | NO <input checked="" type="checkbox"/> _____ |

Obviousness

Question No. 7: Are one or more of the asserted claims of the '137 patent invalid because the claimed method of use was rendered obvious by prior art publications or references?

a) Claim 1: YES _____ NO ✓

b) Claim 4: YES _____ NO ✓

c) Claim 5: YES _____ NO ✓

d) Claim 6: YES _____ NO ✓

e) Claim 7: YES _____ NO ✓

f) Claim 12: YES _____ NO ✓

If you found infringement of one or more claims and also that the those claims are valid, please answer the next question concerning damages. That is, if you answered YES to one or more parts of Questions 1, 2, or 3, and NO to each corresponding part of Questions 6 and 7, please answer next the corresponding questions concerning damages.

If you found either no claims to be infringed by answering NO to all parts of Questions 1, 2, and 3, or if you found all infringed claims to be invalid by answering YES to all corresponding parts of Questions 6 and 7, please return your verdict to the court.

C. DAMAGES

Reasonably Royalty

Question No. 8: What is the reasonably royalty for infringement of any valid claim(s)?

(a) Rate per tablet: \$.035 or 3.5 cents

Multiplied by: Total number of tablets sold

Total reasonable royalty: \$ 10,210,071.⁰⁰/₁₀₀

OR

(b) Rate of royalty: _____%

Multiplied by: Net sales

Total reasonable royalty: \$ _____.

Pre-judgment Interest

Question No. 9:

(a) Should pre-judgment interest be awarded on the amount determined in Question 8?

YES _____ NO

If the answer to Question 9(a) is YES, please answer Question 9(b).

If the answer to Question 9(a) is NO, please return your verdict to the court.

(b) The rate of pre-judgment interest is _____%

D. LACHES - Perrigo has the burden of proof by a preponderance of the evidence

Question No. 10:

- (a) When did plaintiffs BWH or IBT know, or should have known, of its infringement claim against defendant Perrigo?

DATE Aug. 11, 2008

- (b) Did plaintiffs BWH or IBT unreasonably delay in filing this lawsuit in 2013?

YES _____ NO X

If you answered yes to Question 10(b), please answer next Question Nos. 10(c) and (d).

If you answered no to Question 10(b), please return your verdict to the Court.

- (c) Did defendant Perrigo suffer material harm as a result?

YES _____ NO _____

- (d) Did plaintiffs BWH or IBT file this lawsuit in 2013 without justification?

YES _____ NO _____

12/14/16

DATE

Kelly Truett

FOREPERSON